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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2195**

Jorge Alberto Sanchez,
a/k/a Jorge Alberto Sanchez-Reyes, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 20, 2010
Affirmed
Ross, Judge**

Ramsey County District Court
File No. 62-K8-02-3314

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Wright, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Jorge Sanchez was arrested for and convicted of possessing cocaine after police, acting on an informant's tip, stopped the vehicle he was riding in and found drugs on his person. Sanchez fled the country for three and a half years, avoiding his sentence. Police arrested him on his return. Sanchez filed a petition for postconviction relief, which the district court denied as untimely. Sanchez appeals, asking us to reverse the denial of his untimely petition under the interests-of-justice exception. Because that exception applies only to petitions filed within two years after the event that supports the exception, and because the facts that allegedly support Sanchez's interests-of-justice claim were known to him more than two years before he filed his petition, the petition cannot survive the deadline. We therefore affirm.

FACTS

Sanchez was stopped on an informant's detailed tip. St. Paul police received information that "Jorge," a 30-something Latino with his head shaved on the sides and a ponytail, would be delivering a large quantity of drugs near Dewey Street and St. Anthony Avenue, either driving a white Ford Bronco or as a passenger in an older white minivan. Police waited there. A white minivan appeared and police saw that the passenger, later identified as appellant Jorge Sanchez, matched the informant's description. Police stopped the van, and Sanchez immediately got out holding a black toolbox. Police pat-searched him for weapons. They found a sandwich bag in his pocket containing three large bindles of methamphetamine and cocaine.

The state charged Sanchez with possessing cocaine. He unsuccessfully moved the district court to suppress the evidence. He waived his right to a jury trial and agreed to submit the case to the district court under Minnesota Rule of Criminal Procedure 26.01, subdivision 4, preserving his right to appeal the suppression decision. The district court found Sanchez guilty and in November 2003 sentenced him to 98 months in prison. The district court stayed execution of the sentence to allow him to appeal the suppression ruling and scheduled a status hearing for March 2, 2004.

This court never heard Sanchez's appeal. Sanchez retained attorney Richard Coleman to represent him on appeal. Coleman would later testify that Sanchez did not pay him the amount they had agreed on for the appeal. Coleman sent Sanchez a letter in January 2004 informing him that Coleman must be paid or he would not complete the appeal. Coleman also suggested that Sanchez contact the public defender's office if he could not pay Coleman. Sanchez gave Coleman a used car as partial payment.

Coleman filed the notice of appeal despite not having been fully paid. At the status hearing on March 2, he informed the district court that he had filed the appeal only that day after Sanchez contacted him the day before and finally paid the filing fee. The court directed Sanchez to return to court on July 6 unless he filed all papers necessary to perfect his appeal.

Sanchez did not file the necessary papers. This court dismissed his appeal in April 2004 because it was late and because he had not arranged to have a transcript prepared and delivered. We granted Sanchez leave to move to reinstate the appeal by submitting a completed transcript certificate and demonstrating that either the appeal was timely or

there was good cause to extend the deadline. Sanchez moved to reinstate the appeal in May, but he failed to include a completed transcript certificate. Coleman had asked the court reporter to sign the certificate of transcript and submit it to this court, promising to pay for the transcript himself if this court granted the motion to reinstate. The court reporter instead informed this court that satisfactory financial arrangements had not been made for transcription, and in June this court denied the reinstatement motion.

Coleman's testimony conflicts with Sanchez's regarding their communications between the March 2 and July 6 district court hearings. Coleman testified that he contacted Sanchez on a date he did not recall to obtain payment and to inform him that time was running out. Coleman said that he saw Sanchez occasionally either downtown or near Coleman's office in West St. Paul. He believed that he communicated with Sanchez by telephone or in person. Sanchez testified that, after he gave Coleman the car, Coleman never asked for money to buy transcripts. Sanchez also testified that he contacted Coleman during the first week of July 2004 but that Coleman did not get back to him before the July 6 hearing.

Sanchez appeared in district court for his second status hearing on July 6. Coleman was not present. The district court informed Sanchez that his appeal had not been perfected and that the court understood that he was present to turn himself in to serve his sentence. Sanchez said that he had expected Coleman to be at the hearing, and the court had Sanchez wait while it contacted Coleman, who soon arrived. Coleman and Sanchez gave different accounts of what happened after Coleman arrived at the courthouse. Sanchez testified that Coleman spoke to him outside the courtroom, told him

that he had lost his appeal and would be sent to prison that day, and encouraged him to flee the building. Coleman testified that Sanchez told him he was going to the restroom and then disappeared. When Coleman informed the district court that he could not locate his client, the court executed Sanchez's sentence and issued a bench warrant for his arrest.

Sanchez fled to Mexico. When he returned to the United States in January 2008, police arrested him at the border. He was returned to Minnesota and is serving his sentence.

Sanchez eventually contacted the public defender's office. He was allegedly surprised when a public defender informed him that his appeal had never been completed. The public defender filed a postconviction petition on his behalf in March 2009. The petition asserted that the district court had erred by concluding that police had reasonable suspicion to stop and search Sanchez for drugs and that he had been deprived of effective assistance of counsel when his attorney failed to comply with appellate rules or make financial arrangements for the transcripts. Sanchez argued that the court should consider his untimely petition in the interests of justice because he was entitled to one review of his conviction. The district court denied Sanchez's postconviction petition after an evidentiary hearing. Sanchez appeals.

DECISION

Sanchez challenges the district court's denial of his petition for postconviction relief. "We review a postconviction court's findings to determine whether there is sufficient evidentiary support in the record." *Dukes v. State*, 621 N.W.2d 246, 251

(Minn. 2001). “The decisions of a postconviction court will not be disturbed unless the court abused its discretion.” *Id.* But we review legal issues de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

When a direct appeal is not available, Minnesota Statutes section 590.01 allows a person convicted of a crime to seek relief from his conviction by filing a postconviction petition in the district court. Minn. Stat. § 590.01, subd. 1 (2008). A deadline limits the time to file postconviction petitions. For petitioners whose convictions became final before August 1, 2005, the deadline is August 1, 2007. *See* 2005 Minn. Laws ch. 136, art. 14, § 13, at 1098 (“Any person whose conviction became final before August 1, 2005, shall have two years after the effective date of this act to file a petition for postconviction relief.”). A conviction is final for retroactivity purposes when “a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed . . . or finally denied.” *Hutchinson v. State*, 679 N.W.2d 160, 162 (Minn. 2004) (ellipsis in original) (quotation omitted). At the very latest, Sanchez’s conviction became final when the time to file a petition for further review with the Minnesota Supreme Court passed, 30 days after this court denied his motion to reinstate his appeal in June 2004. *See* Minn. R. Crim. P. 29.04, subd 2. Because Sanchez’s conviction became final before August 1, 2005, he had until August 1, 2007, to file a timely postconviction petition. His petition, filed in March 2009, was not timely.

Sanchez acknowledges that his petition was untimely but argues that he qualifies for an interests-of-justice exception to the deadline. A postconviction court may hear a

petition that is time-barred if “the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.” Minn. Stat. § 590.01, subd. 4(b)(5) (2008). But there is an additional deadline that applies to petitions invoking an exception to the primary deadline. Any petition invoking an exception to the primary deadline must be filed within two years of the date the petitioner’s claim arose. *Id.*, subd. 4(c) (2008).

Sanchez argues that his petition is in the interests of justice because his conviction was never reviewed directly on appeal or in a postconviction proceeding. But this claim of injustice arose more than two years before Sanchez filed his petition. All of the facts on which Sanchez’s claim is based were known or knowable by him by July 6, 2004, when the district court informed him that his appeal had not been perfected and that his sentence would be executed. At that time, Sanchez knew or could have easily determined that his appeal had been dismissed without a substantive review. Sanchez contends that he did not learn that he still had a right to challenge his conviction until he contacted the public defender after his return from Mexico. But the fact that Sanchez voluntarily left the jurisdiction and postponed his awareness of his postconviction claim does not circumvent the secondary deadline. *Cf. Herrmann v. McMenemy & Severson*, 590 N.W.2d 641, 643 (Minn. 1999) (holding, in the civil context, that a claim arises when it would survive a motion to dismiss for failure to state a claim and that ignorance of a claim does not toll the limitations period absent fraudulent concealment). Sanchez’s postconviction petition is therefore time-barred even though he invokes an exception to the primary deadline.

Sanchez relies on *Stutelberg v. State* to argue that a postconviction petition “cannot be barred as untimely where the petitioner has not been heard on appeal.” 741 N.W.2d 867, 874 (Minn. 2007). But *Stutelberg* is inapposite because it addressed a petition that was filed within section 590.01’s primary deadline but was denied by the district court on general untimeliness grounds. Even though the petition was timely under the statute, the district court denied the petition because it concluded that the petitioner had unduly delayed its filing, and the supreme court reversed because the petitioner had never had a direct appeal of his conviction. *Id.* at 872, 874. The supreme court did not have occasion to address the issue presented in this case, which is whether a petition filed *after* section 590.01’s primary deadline may be denied as untimely even though the petitioner never directly appealed his conviction. The deadline provision expressly contemplates that a petitioner’s claim may be time-barred even if the petitioner had no direct appeal: “No petition for postconviction relief may be filed more than two years after the later of . . . the entry of judgment of conviction or sentence *if no direct appeal is filed*[.]” Minn. Stat. § 590.01, subd. 4(a) (emphasis added). The statute solidly forecloses Sanchez’s argument that he is entitled to a review of his conviction by virtue of the lack of any prior direct appeal.

The district court correctly dismissed Sanchez’s petition for postconviction relief.

Affirmed.